

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of Developing a Unified Inter-carrier Compensation Regime))))	CC Docket No. 01-92
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**Reply Comments of the
Montana Public Service Commission**

I. INTRODUCTION AND SUMMARY

The FCC, in its March 3, 2005 Further Notice of Proposed Rulemaking (FNOPR), seeks comments on replacing existing intercarrier compensation (ICC) regimes with a unified regime. The Montana Public Service Commission (MPSC) filed on May 23, 2005 its initial comments in this FNOPR. The MPSC also initiated in 2004 its own Montana proceeding (D2004.5.84) and has on two occasions held workshops on ICC and related matters. The most recent workshop was held June 28, 2005.¹ Parties to the MPSC D2004.5.84 proceeding have urged the MPSC to file reply comments in the FNOPR. In these reply comments, the MPSC will first comment on broad policy matters, and then respond to certain initial issues and comments.

This FNOPR has potentially grave impacts on Montana carriers that serve customers in rural and high cost areas. Therefore, the MPSC takes seriously the implications of this FCC rulemaking. In recognition of the implications of ICC reform, the National Association of Regulatory Utility Commissioners (NARUC) has embraced principles outlining goals for reform (Released May 5, 2004). NARUC also convened a task force in 2004 that has served as an important

¹ The MPSC's ICC workshops included, among other participants: Qwest, National Exchange Carriers Association (NECA), Western Wireless, Verizon, MCI, Montana Independent Telecommunications Systems (MITS), Montana

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catalyst stimulating ICC discussions and debates. The MPSC was an active participant in these initial NARUC efforts and we endorse NARUC's continuing efforts to facilitate debate and discussion on the myriad ICC and related issues.

The MPSC's initial reaction to the FCC's FNOPR in this docket is that all stakeholders, including the FCC, must return to first principles and recognize the primacy of universal service. While the FNOPR focuses on ICC, ICC is inseparable from other policy issues and goals, as recognized by most parties filing initial comments in this proceeding. ICC reform must not be done in isolation. As the potential consequences and risks that such reform may have on the overarching national goal of universal service,² a congressional goal dating to the 1934 Communications Act, are extraordinary, the MPSC urges the FCC to ensure that any ICC reform complies with the universal service principles in section 254 of the '96 Act and not just be "a consideration."³ The Montana legislature has also indicated that the maintenance of universal service is the most important state telecommunications policy. § 69-3-802, MCA. Competition is encouraged in Montana only to the extent that it furthers the goal of universal service. The FCC is obliged, pursuant to the '96 Act, as the MPSC is pursuant to state law, to ensure that ICC reforms do not jeopardize universal service.

In its initial comments Qwest asserts that there is almost no difference, "if any," between the connecting functions among carriers involved in originating and terminating interstate and intrastate toll calls, IP voice service, local calls or any other calls that use local exchange switching facilities and common lines (Initial May 23, 2005 Comments, page 2). Yet there are inconsistent regulations in place, and new ones that might emerge. For example, CMRS carriers have major trading area (MTA) markets that, in combination with being absolved of

Telecommunications Association (MTA), and the Montana Consumer Counsel (MCC).

² 47 USC §254 of the Telecommunications Act of 1996 (the "'96 Act").

³ The FCC's March 3, 2005 FNOPR asserts that "Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be *a consideration* in the development of any intercarrier compensation regime." (¶ 32, emphasis added)

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paying carrier access rates give an advantage to CMRS services when compared to services that wireline carriers provide. As another example expanded on later, is that federally regulated special access rates generate, by design, implicit subsidies that some commenters say ought to be immune from any FCC mandated ICC reform. Given the technological complexities (e.g., wireline, wireless, VoIP, cable) and various kinds of telecommunications traffic (e.g., CMRS, virtual NXX, VoIP, CLEC, etc.) the FCC will be challenged to construct an ICC regime that is technologically and competitively neutral and that achieves the primary goal of universal service.

For this reason, the MPSC advises the FCC to make changes that are enduring, but that are flexible and allow for necessary adjustments. This approach will allow the FCC to address unintended consequences. As the ICF correctly asserts, rural carriers face the potential for dramatically higher rates and fewer service providers (ICF Initial Comments, p. 18) – a potential that is in direct conflict with the '96 Act's principle (Section 254) that consumers in rural and high cost areas have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at reasonably comparable rates. Any such reform must recognize the unique circumstances of carriers that serve customers in rural and high cost areas.

II. DISCUSSION

Interconnected ICC and universal service issues

The policies and issues discussed in these comments are interconnected. The “three-legged stool” metaphor - access rates, universal service payments, and end-user rates - to describe the sources of support for ILECs that serve customers in rural and high cost areas is illustrative.⁴ However, if the FCC

⁴ The Montana Telecommunications Association's May 17, 2005 ICC comments to the MPSC suggest that investment could also be reduced (MPSC D2004.5.84). For reasons involving service quality and the provision of advanced services on ILEC networks, both of which are Section 254 goals, the

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asserts unilateral authority and imposes access reform, such as bill and keep (B&K), then there is, as CenturyTel, Inc. suggests, need for revenue neutrality (Initial Comments, pp. 17-18, 45). The MPSC agrees that any diminution of access rates will have impacts, perhaps irreparable ones, on those ILECs that serve customers in high cost rural areas if there is not revenue neutrality.

Reduced access rates are not the only potential risk to universal service that carriers face in serving customers in rural and high cost areas. The FCC, through the Federal-State Joint Board on Universal Service (FSJB) is inquiring (in CC 96-45) into how the basis of support might change for rural and non-rural carriers. In that FSJB proceeding, the MPSC submitted Reply Comments on December 14, 2004. In its comments the MPSC raised, among other concerns, a cream-skimming problem that would arise if the FCC were to base an ILEC's federal universal service fund support on the provider's cost for the "lowest-cost technology." The MPSC believes that because of the greater obligations (e.g., carrier of last resort -- COLR) imposed on ILECs that serve customers in rural and high cost areas, compared to other carriers (e.g., wireless, VoIP), the "lowest-cost technology" basis of support, if adopted, would leave ILECs in the lurch. Whether an ILEC that serves rural and high cost areas receives reduced federal universal service support due to a change in the support mechanism or due to reductions in access revenue, universal service is put at risk.

In Montana, wireless carriers and cable providers have begun to make inroads as providers of telecommunications services. These carriers, however, most often begin by serving the higher density towns and cities in Montana and not the hundreds of small rural and high cost areas of Montana that ILECs with a COLR obligation must serve (see our February 22, 2005 WSJ citation referenced at footnote number 10 below). Cream skimming is further exacerbated if access charge rates are diminished and the shortfall overcome by local rate increases (via increased FCC SLC end user rates or increased ILEC end user rates). In

MPSC finds unacceptable, as we expect MTA would find, any trading off of high quality networks just to reduce access charges. The MPSC does not, however,

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this regard, we agree with the jointly-filed Initial May 23, 2005 comments of Mid-Rivers Telephone Cooperative (MRTC), MTA and MITS (hereafter MMM in these reply comments) expressing concern with the “least cost technology” basis for federal universal service funding, and of CenturyTel Inc. involving ILEC COLR obligations (see Initial comments pp. 38-39).

Bill and keep (B&K) and rural telecommunications networks⁵

The MPSC is opposed to B&K. Our opposition stems from both a disagreement over whether the often recited necessary conditions exist to impose B&K, and the consequences on ILEC networks of imposing such a pricing mechanism. That said, while certain access rates may need revision they should not be summarily eliminated without scrutinizing the consequences.

There is no evidence that the cost to originate and to terminate traffic is zero or that for pairs of individual ILECs there is balance in the amount of traffic originated and terminated. In addition, and based on Bonbright’s ratemaking principles, if the FCC chooses to impose reduced access charges, and no charges if B&K is imposed, then the FCC should do so gradually over time so as to mitigate rate impacts on end users to achieve the goal of universal service.

In the MPSC’s ICC proceeding, Western Wireless comments that PSCs should proceed with access reform despite the FCC proceeding (June 16, 2005 Comments, p. 16, D2004.5.84). The MPSC has taken such a deliberate approach to rate rebalancing. The MPSC also has opened a docket that will

regulate all of Montana’s ILECs. In any case, the three legs remain the best means to balance the “stool.”

⁵ It is not clear why “special access” should be carved out of this CC 01-92 proceeding (see Qwest’s Initial May 23, 2005 comments, pages 4, 11). Most of the special access that Qwest provides in Montana is pursuant to FCC tariffs for which Qwest receives about \$23.5 million dollars annually and that, according to Qwest, provides implicit subsidies for services that are provided to CLECs and IXC’s (MPSC D2002.7.87, Order No. 6435(b), ¶¶107-109). http://psc.mt.gov/eDocs/DocketsAndOrders/D2002-7-87_6435b.pdf

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consider, among other matters, access charge rate reductions.⁶ Importantly however, the MPSC does not regulate all or even most ILECs in the state. Nor does the MPSC regulate CLECs or wireless carriers.

ILECs that serve customers in rural and high cost areas, however, depend critically on such revenue, and B&K will, other things being equal, jeopardize their provision of universal service. In contrast, wireless carriers that have avoided such charges, based on FCC regulatory policies, ought not be so advantaged. Nor should internet telephony (e.g., VoIP) providers be allowed to use a carrier's facilities to originate and terminate calls without paying for such use. As Jeffery Citron recently stated, when a Vonage customer makes a call it will in most every case be handed off to an incumbent telephone service provider; similarly, cable telephone providers must rely on access to telephone networks to provide voice service.⁷ In this regard, the MPSC agrees with and supports the Initial May 23, 2005 Comments that MMM filed (pp. 9-13); and also those that CenturyTel Inc. filed.⁸

A noteworthy NARUC principle (III.B) asserts that “[i]ntercarrier compensation should be designed to recover an appropriate portion of the requested carrier's applicable network costs.” This principle is reflected in the concerns that MMM and CenturyTel Inc. have raised. B&K could reduce access revenues to the point that these ILECs' wireline systems are jeopardized, in terms of prices and service quality, thereby jeopardizing the provision of comparable broadband services. Imposing B&K on carriers serving rural high cost areas must be premised on a finding that there are no relevant network costs, including joint and common costs. Since such costs do exist to originate

⁶ See D2005.6.105 (formerly a Notice of Inquiry in D2005.1.1).

⁷ April 19, 2005 Statement of Jeffrey Citron, CEO, Vonage, before the “Committee on Senate Judiciary Subcommittee on Antitrust, Competition, and Business and Consumer Rights.”
http://www.vonage.com/corporate/press_news.php?PR=2005_04_19_2

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and terminate calls on carriers' networks serving rural and high cost areas, no proof will be forthcoming, and B&K should not be adopted. The level of intrastate originating and terminating access charges ought to remain at the discretion of individual companies, subject to applicable state regulations. Any access reform should be implemented incrementally, as CenturyTel Inc. suggests. Therefore, FCC policies reforming ICC should embrace the above noted provision in the NARUC principles as reflected in the comments filed by MMM and CenturyTel Inc.

Affordable and comparable benchmarked rates and services

Access to quality services that are affordable, including advanced services, must be available on a geographically comparable basis under § 254 of the '96 Act. For various reasons the MPSC is concerned that this overarching goal may not be achieved with ICC reform. First, in their Initial May 23, 2005 comments MMM express concern over the structure of benchmarked rates (page 6). We agree with MMM that rate benchmarking should account for the scope of local calling areas. As MMM correctly assert, to ignore calling scope is inconsistent with the universal service principles in § 254(b)(3). Practically speaking, this means that benchmarking mechanisms must account for the scope of local calling areas in how universal service funding is estimated and provided to those carriers that serve consumers in rural and high cost areas.

Second, CenturyTel Inc.'s initial comments provide evidence on income disparities between metro and rural areas. CenturyTel Inc. also comments (p. 13) that in non-rural areas, carriers may exercise their right to price SLCs flexibly. Therefore, any benchmarking must include the actual SLC rates charged, and not the SLC rate caps (unless they coincide) when making

⁸ The Montana PSC previously raised this concern in comments filed with the FCC (Initial May 2004 Comments In the Matter of IP-Enabled Services, WC 04-36). Those comments also address the risk of "stranded costs."

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benchmark rate comparisons. Not to do so would overstate the rates paid in metro areas, assuming SLCs are included, which they should be, in a rate comparability analysis. To hold that SLCs and other rates (e.g., extended area service) are not basic exchange end user rates and that they should not be included in any rate comparability analysis will result in an “apples and oranges” comparison, one that is not compliant with § 254 of the '96 Act. SLCs, extended area service and base rates are all local exchange end user rates. End users pay them all to obtain local exchange service access regardless of the regulator that sets the rates.

Finally, in our ICC proceeding, the Montana Consumer Counsel (MCC) filed comments stating that the MPSC should reject any proposed change in the intercarrier compensation regime that shifts more costs to local exchange service customers (MCC Comments filed June 25, 2004, D2004.5.84). The MCC stated that the rationale for charging local exchange customers for loop costs, rather than including a portion of these costs in toll carriers' costs, centers on the argument that loop costs are customer specific and not traffic sensitive, an argument the MCC believes ignores the fact that the loop is part of the integrated telephone network that was built to provide both local and toll service. As the MCC notes, without a loop no service is available over a wireline carrier's system. The MCC's comments are in accord with the NARUC principle (III.B) that “[i]ntercarrier compensation should be designed to recover an appropriate portion of the requested carrier's applicable network costs.” In addition, it appears that both the MCC's comment and CenturyTel Inc.'s interpretation of the '96 Act's pricing standards for access dovetail: the additional cost of exchanging traffic between carriers is not zero. (See pages 32-34 of CenturyTel Inc.'s Initial March 23, 2005 Comments).

Contribution base for the Federal Universal Service Fund (FUSF)

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The mechanism by which carriers contribute to the goal of universal service must be equitable and not selectively discriminatory. As evident from MMM's initial comments (pages 13-14), there is serious concern about the sustainability of the contribution mechanism for federal universal service funding. Section 254(d) requires all interstate telecommunications providers to contribute on an equitable and nondiscriminatory basis to preserve and advance universal service. While certain carriers may end up escaping this obligation to contribute, they should not escape paying access charges that other telecommunications carriers pay to use the public switched telecommunications network (PSTN). All carriers that use the PSTN must pay for that use. In this regard, the MPSC endorses the initial comments filed by CenturyTel Inc. that favor a competitively neutral contribution mechanism, a position that the MPSC has advocated in earlier comments before the FCC.⁹ To force all access charges to zero (B&K) so that all carriers are treated equally is not an acceptable resolution. The MPSC's views expressed here would apply to any capacity-based mechanism that the FCC imposes as part of any new ICC regime.

Transport costs, edge proposals and terminating transport rates

Montana's rural companies face unique circumstances in transporting calls to and from their customers. This uniqueness was recognized in a recent Wall Street Journal article.¹⁰

⁹ See CenturyTel, Inc. Initial May 23, 2005 Comments in CC 01-92 (pages iii, 34-38). See also the MPSC's Initial May 2004 comments to the FCC wherein the MPSC raised the concern for technological neutrality in how VoIP is regulated (In the Matter of IP-Enabled Services, WC 04-36, pages 4-5).

¹⁰ Anne Marie Squeo, Staff Reporter to The Wall Street Journal, February 22, 2005, page A1.

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Some areas of the country are still completely dependent on subsidized phone service. In Ovando, Mont., which has just 50 or so residents and is 70 miles away from the nearest city, there's no cellphone or cable service. The only provider of phone and Internet connections for Steve Smith and his wife, Alayne Marker, is the Blackfoot Telephone Cooperative.

In addition, in its initial comments NECA states (p. 13) that 22 percent of the wire centers are over 100 miles from a major LATA tandem and 31 percent are between 50 and 100 miles from a LATA tandem. GVNW in its initial (CC 01-92) comments actually provides examples of the transport distance burden that two Montana Cooperatives face. For Nemont Telephone Cooperative, GVNW reports transport distances of between 278 and 302 miles for four Montana communities. GVNW reports transport distances of between 100 and 156 miles for three communities that Range Telephone Cooperative serves.

In their Initial May 23, 2005 Comments, MMM raise related concerns (CC 01-92, pages 8-9). While the MPSC agrees with MMM, we have additional comments on the related issues. First, the idea of an “edge” is not an idea that first emerged in this proceeding. Edge pricing concepts are embedded in the current system of access pricing, although they have not been labeled as such. The edge pricing that is currently in place, however, differs significantly from some proposals that have emerged in this proceeding. Because of the transport distances required by Montana carriers to serve rural and high cost areas, the cost to transport traffic could increase unreasonably with certain of the edge proposals. Because of disparate regulatory treatment, such as the allowance of multi-state MTAs for wireless providers, Montana ILECs that serve customers in rural and high cost areas will continue to be disadvantaged if the MTAs in place today are not changed to match the study areas of ILECs. Our point here, however, only addresses how access charges are assessed and would not restrict how wireless carriers package their respective products. Thus, the

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MPSC encourages the FCC to consider Qwest's proposal to "eliminate the intra-MTA rule for LEC-CMRS traffic" (CC 01-92 Initial Comments, pp. 50-55).

Some ICC plans and proposals (e.g., the ICF plan) would limit the rate for the delivery of terminating traffic to only \$.0095/minute, a rate that is most likely too low for ILECs that are obligated to provide networks over which quality services are provided to consumers in rural and high cost areas. CenturyTel Inc. suggests doubling this termination rate (Initial May 23, 2005 Comments, p. 28). As we do not know how much higher the rate must be the amount of any necessary increase should be company specific. We advise the FCC, in regard to transport rate issues, to heed the concerns raised in initial and reply comments by MMM, CenturyTel Inc. and GVNW, and to allow for company-specific pricing flexibility.

Block Grants (and the State Allocation Mechanism)

Some parties that filed initial and/or, ex parte comments with the FCC have proposed providing block grants of federal universal service funds to states. Whether labeled a block grant or a state allocation mechanism (BG or SAM), we understand that with such mechanisms, states would receive lump sum grants that they would, in turn, disburse to carriers. The MPSC disfavors such proposals. The MPSC is cognizant of the FCC's current effort to reconsider the funding mechanisms for rural and non-rural carriers and the FCC's intent to revisit the rural mechanism.¹¹ In this referral, the FSJB may recommend and the FCC may then adopt a forward-looking economic cost (FLEC) model for rural carriers. A new and different FLEC model could also apply to non-rural carriers. In any case, the MPSC does not have sufficient resources to manage and use FLEC models as used with the current high cost model mechanism. Nor are we

¹¹ The FCC's September 8, 2004 referral asked the Federal-State Joint Board on Universal Service to review the FCC's rules relating to the high cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order (see CC Docket No. 96-45; FCC 04-125).

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able to duplicate the FCC's oversight of existing rural high cost mechanisms. The FCC should continue to manage and improve its high cost modeling effort.

The MPSC has concern that the FCC might freeze the total universal service allocations based on a static test year, such as 2004. The MPSC opposes such a freeze regardless of how it is implemented (by way of a BG, a SAM or by the current high cost mechanisms). Such a freeze is entirely inconsistent with Section 254 of the '96 Act and will only lead to protracted battles over shares of a diminished federal universal service fund. If the growth in the FUSF is to be limited, there are other and better means by which to do so.¹²

III. CONCLUSION

These reply comments address important issues for the MPSC. Foremost among the MPSC's concerns with how the FCC reforms ICC practices is how such reform will impinge on the ability of carriers that serve rural and high cost areas to provide universal service to their customers. That is our overarching concern. We note those comments filed by others with which we agree. We urge the FCC to carefully consider these comments, and we appreciate the opportunity to comment.

July 20, 2005

Respectfully submitted,

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Commission

¹² The MPSC supports basing a carrier's support on its own costs (see MPSC's December 14, 2005 comments to the Federal-State Joint Board on Universal Service in CC 96-45; also see the MPSC's September 22, 2004 comments in response to the FCC's NPRM, CC 96.45).

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